

# ARIZONA

## REAL ESTATE BULLETIN

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*Online Edition*  
[www.re.state.az.us](http://www.re.state.az.us)



*Hoping to become certified to teach the Broker Management Clinic, 35 instructors attended an October Instructor Development Workshop in Phoenix.*

## Broker Audit Clinic gets a new name and a new home

In the past there have been two people in Arizona who could teach a Broker Audit Clinic, both of them ADRE auditors. Now, thanks to legislation enacted during the recent legislative session, 73 people are qualified and the Clinics have a new name and are being presented by a dozen Arizona real estate schools.

If you are a newly licensed broker, you must attend a Clinic within 90 days of receiving your license.

Each associate real estate broker who changes status to designated real estate broker must attend a Broker Management Clinic within 90 days of status change unless the broker has taken the course within the current license period.

Each designated and self-employed real estate broker must attend a Broker Management Clinic once during each two-year licensing period.

If a broker fails to attend a clinic as required, the Department will summarily suspend the broker's license and a copy of the suspension will be mailed to the licensee's employing broker. The suspended broker may request a hearing on the suspension or demonstrate compliance, in which case the Commissioner will vacate the suspension and the broker may reinstate the license pursuant to A.R.S. § 32-2131(A).

The Department held Instructor Development Workshops in September and October to provide training for in-

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## This may be the only issue of the *Bulletin* you'll receive for another year

The *Arizona Real Estate Bulletin* is published every other month. Once a year we are able to mail a hard copy of the publication to Arizona's more than 46,000 active and inactive licensees. But budgetary restraints mean

that the other five issues are available only on our Web site, or by paid subscription.

We hope the *Bulletin* is of value to you. We consider it one of our main

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## Online database a hit with public, licensees

The Department's new Licensee Database available on our Web site is popular with licensees and the public. In November, an average of more than 100 people accessed the directory each day.

The database contains public information about more than 46,000 active and inactive licensees. Visitors may search the database for individual licensees by entering the licensee's last or first and last name. They will then see:

- The type of license (real estate, cemetery, membership-camping broker, associate broker or sales person;
- License number
- License expiration date
- License status (active or inactive)
- Employer's name, business address and telephone number

Licensees' home addresses and telephone numbers are not displayed.

Database users may also search Arizona's more than 4,500 licensed real estate firms to obtain:

- A firm's address and telephone number
- Designated broker and the broker's license information (as shown for an individual search, above)
- A list of main and branch office licensed employees.

A search may also be made by franchise name. Entering Century 21 (C21-) or Re/Max (RMA) for instance, will produce a list of all franchisees in the state.

The database is updated instantly whenever a change is entered by a Department employee, but it may take three to five days before a change of in-

*Continued on page 2*

# Follow basic contract principles to avoid disputes and liability

by Michelle Lind

Reprinted from the November 2000 issue of the Arizona Real Estate Digest, with permission.

A significant number of disputes could be avoided if those involved in a real estate transaction would consistently adhere to the basic principles of contract law. Obviously, reducing disputes between buyers and sellers also reduces licensee liability.

## The basics

Every real estate licensee knows the basics of contract law. For example, every licensee knows that a contract is simply an agreement between two people. In a contract for the sale of real property, the buyer agrees to buy the specified property for a certain price and the seller agrees to convey clear title to the property. However, most real property contracts, such as the Arizona Association of Realtors® Residential Resale Purchase Contract ("AAR Contract"), contain numerous other important provisions relating to the transaction.

## Get it in writing

It is also common knowledge that pursuant to the Statute of Frauds, a contract for the sale of real property must be in writing and signed by the party to be charged to be enforceable. A.R.S. § 44-101(6). However, the parties sometimes forget that any modification to the contract for the sale of real property must also be in writing and signed by the parties.

Many disputes between buyers and sellers could be avoided if all contract modifications were put in writing and signed. For example, in the AAR Contract, if the buyer elects to allow the seller an opportunity to correct a disapproved item and the seller agrees to do so, that agreement is a modification of the contract, which must be in writing and signed by the parties.

Unfortunately, disputes arise when the licensee obtains only the seller's verbal agreement to correct a disapproved item and conveys that verbal agreement to the buyer by a letter signed only by the licensee. If the seller subsequently refuses to correct the item, the buyer is understandably angry, but has no recourse against the seller

because the seller's verbal agreement to modify the contract is not legally enforceable. Therefore, the buyer may look to the licensee for recompense.

## Both spouses must sign

Additionally, most licensees are aware that in any transaction for the acquisition, disposition, or encumbrance of an interest in real property, both husband and wife must sign the contract for the community property to be obligated. A.R.S. §25-214 (C)(1). Therefore, both husband and wife must sign all contracts and other agreements relating to the transfer of real property, including modifications of the contract. The signature of both parties is also imperative for non-married buyers and sellers.

Again, using the buyer disapproval and seller response procedure set forth in the AAR Contract as an example, both husband and wife buyer should sign the written notice of items disapproved and election. Disputes have arisen when one buyer spouse signs the written disapproval notice, electing to allow the seller an opportunity to correct the items disapproved, and the notice is delivered to the seller without the other spouse's signature.

If the non-signing buyer spouse, upon seeing the list of items disapproved, wants to elect to cancel immediately, instead of allowing the seller an opportunity to correct the items, a dispute is inevitable. Obviously, this kind of dispute creates not only a strain on the buyers' marriage, but a legal dilemma as well. Similarly, both sellers must sign any agreement to make requested repairs.

## Be specific

Finally, licensees are cognizant that the contract contains all of the parties' legal rights and obligations regarding the transaction. Therefore, the contract must be clear and contain specific terms. The AAR Contract contains such specific terms.

However, oftentimes the parties alter the standard terms in the AAR Contract or add additional terms and conditions. When drafting such terms, it is important to avoid ambiguity. Contract language is ambiguous when it can be reasonably interpreted in more than one way and the meaning of the

contract language cannot be determined within the "four corners" of the contract. A court will interpret an ambiguous contract term by trying to determine the intent of the parties at the time of the contract. To avoid ambiguity, avoid "short-cut" phrases, such as "48 hour first right of refusal;" instead, write out exactly what the parties intend.

Contingency clauses are a common source of ambiguity. Contingency clauses must be drafted precisely because contingencies frequently become the subject of dispute. At a minimum, a contingency clause should specify the terms of the contingency, the exact time in which the contingency must be fulfilled, and the rights and obligations of the parties if the contingency is not met.

## Fewer disputes mean less liability

Contract law requires that all agreements for the sale of real property be written in clear and unambiguous terms and signed by all parties, whether those agreements are made at the time of contract formation or are contract modifications thereafter. If these basic contract law principles are applied, each transaction will proceed more smoothly, with fewer disputes and less liability for the parties and licensees involved.

*Michelle Lind is a State Bar of Arizona Certified Real Estate Specialist and serves as General Counsel to the Arizona Association of Realtors®.*

## Database

*Continued from page 1*

information filed with the Department is posted in the database.

It is also possible to download the entire licensee database, or the entity database. The download is in a format suitable for insertion in popular computer database programs.

To access the database, navigate to the Web site at [www.re.state.az.us](http://www.re.state.az.us) and click on Directory of Licensees.

**Have you purchased your 2000 Arizona Real Estate Law Book? See page 8.**



Jerry Holt

## News From The Commissioner

As the year draws to a close, I look back on what the Department has accomplished this year, and I'm pleased.

We've revised the Arizona Specific portion of the real estate prelicensure examination to more fully serve and protect the public. My thanks to John Bechtold, Cec Daniels, Richard Blair, Harry Dickey, Lin Ferrara, Bill Gray, Barbara Freestone, Jim Hogan, Andy Isreal and Terry Zajac who are all professionals of the first order and who worked tirelessly to devise the new test questions.

All Department investigators, auditors and customer service representatives are now required to complete the 90-hour prelicensure education course required to obtain a real estate license.

Legislation drafted by the Department and passed by the Legislature enables approved instructors employed by Arizona real estate schools to present Broker Management Clinics (formerly Broker Audit

Clinics). Now, far more clinics can be offered each year while freeing Department auditors to complete more field audits.

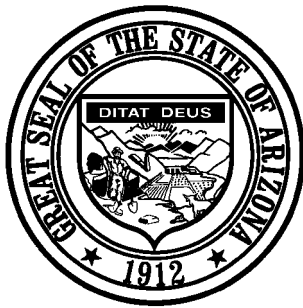
We've held the line on spending and fees. For the 10th consecutive budget year the Department's budget has remained at approximately \$3 million. There have been no changes in real estate license fees since I became Commissioner on May 20, 1991. This not only reflects my commitment to "run a tight ship," but speaks well of the abilities of people like John King, Dick Simmonds and Curt Leaf who count the beans and make 'em stretch. Thanks gentlemen for jobs well done.

Our licensing database, containing information about more than 46,000 licensees and entities, is now available on our Web site, and is updated the moment changes are recorded. Complete databases of individual and entity license information can be downloaded at no cost.

But I am sure more improvements can be made. That's why we have included a Customer Service Survey in this issue of the Bulletin. Please take a few minutes to complete the survey and return it to us. Your responses are very important to me in evaluating the quality of service the Department provides its customers.

Responses are anonymous, so please "tell it like it is." We are committed to making the Arizona Department of Real Estate the best real estate regulatory agency in the country. Your responses will be of great help to me in allocating available resources where they are most needed. I need to know about your good experiences with the Department as well as the not so good. When the results are tabulated we will make them available to you.

I hope this Christmas season finds you "healthy, wealthy and wise" and I wish you the very merriest and blessed Christmas ever.



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## Visit the Department's Web Site

[www.re.state.az.us](http://www.re.state.az.us)

You'll find more than 450 pages of information of  
interest to consumers and the real estate professional.

Here is a brief listing of the site's content:

- Late-Breaking News from the Department
- Department phone numbers, email addresses
- Is your real estate advertising legal?
- Changes in real estate statutes
- The Commissioner's Rules
- Online edition of the Arizona Real Estate Law Book
- Substantive Policy Statements
- Arizona Revised Statutes
- Approved Arizona Real Estate Schools
- Download ADRE forms and subdivision applications
- Download the Arizona Real Estate Bulletin
- Airport Disclosure Requirements
- USDA Expansive Soil Survey of Phoenix area
- Pool Enclosure Requirements
- Consumer Information Page
- Database of all active and inactive licensees

**The mission of the  
Arizona Department of Real Estate  
is to safeguard and promote the public interest  
through timely and capable assistance,  
fair and balanced regulation,  
and sound and effective education.**

## ADMINISTRATIVE ACTIONS

### CORRECTION

Sharon Fix was named as a Respondent in Consent Order 00A016 published in the October issue of the *Arizona Real Estate Bulletin*. Since that issue of the *Bulletin* was published it has been determined that no disciplinary action will be taken against Sharon Fix.

### REVOCATIONS

#### 99A-H1981

**George H. Wardner  
Prescott**

DATE OF ORDER: September 7, 2000

FINDINGS OF FACT: Respondent's California real estate broker's license was revoked by the California Department of Real Estate (CDRE) in January 1996.

In January 1995, Respondent applied for and obtained an Arizona real estate broker's license. In a December 1996 renewal application, Respondent failed to disclose that his California license had been revoked.

When confronted by the Department, Respondent stated that he "just learned recently" of the California revocation. The Arizona Department of Real Estate brought this disciplinary action.

In January 1999, Respondent filed a renewal application for 1999-2001. That application is pending the outcome of this hearing.

Also in January 1999, the CDRE denied Respondent's petition for reinstatement of his California license.

Licensee testified at an Arizona hearing in August 1999. He gave false testimony in two instances. First, he testified that he learned of the California revocation in 1997. The letter he sent to the CDRE in July 1996 shows Respondent knew of the revocation in late June or early July, 1996. Licensee testified that he never received a copy of the California decision revoking his license. Credible evidence shows that Respondent received a copy of the California decision in July, 1996. VIOLATIONS: Respondent violated A.R.S. § 32-2153(B)(1) which prohibits procuring a license by filing a renewal application that is false and misleading. Respondent violated A.R.S. § 32-2153(B)(3) which prohibits making a substantial misrepresentation. He violated A.R.S. § 32-2153(B)(7) which requires that a licensee exhibit honest, truthfulness and good character. Respondent violated A.R.S. § 32-2153(A)(3) which prohibits violating a Commissioner's Rule in that he failed to notify the Department within 10 days of learning of his California revocation.

DISPOSITION: Respondent's real estate broker's license is revoked. Respondent to pay a civil penalty in the amount of \$1,000.

#### 00A-066

**Barbara Jeanette Joy  
Chandler**

DATE OF ORDER: November 27, 2000

FINDINGS OF FACT: Respondent was issued a real estate salesperson's license in 1990, and a broker's license in 1998 when she became self-employed doing business as Southwest Realty.

After receiving complaints and investigating Respondent's books, the Department summarily suspended her broker's license on July 14, 2000.

In April 2000, the Department began receiving complaints from property owners who were clients of Respondent. The owners complained that they were not receiving monthly proceeds from their rental properties and that they were receiving checks from Respondent that bounced.

Department investigators reviewed Respondent's records. A cursory look showed that Respondent was improperly transferring funds between the trust account and her operating account.

Respondent signed a statement on April 27, 2000

in which she admitted she transferred money from the trust account to her operating account "in order to operate business [sic]." Respondent also stated that she had "tried" to repay the money and that she never used the money for personal use. She believed at the time that the shortage was \$34,000.

An audit showed that as of April 30, 1999, she owed about \$24,350 to the trust account, the balance of which was zero. The audit showed that Respondent was not using the trust account funds only for authorized purposes, that she did not keep required and adequate records for the trust account, and that she did not reconcile trust account bank statements monthly or balance client ledgers. The evidence was clear that Respondent was commingling trust funds and business/personal funds.

At the hearing, Respondent stipulated that she owes, in rough estimates, \$242,500 in rents, wages and personal loans, plus interest on the loans.

VIOLATIONS: Respondent used property management trust funds for her own purposes in breach of her fiduciary duty as a broker, in violation of A.R.S. §§ 32-2153(A)(3), -2174, -2175, and Commissioner's Rule A.A.C. R4-28-1101(A) and (C). She commingled trust funds with personal funds, in violation of A.R.S. § 32-2153(A)(16). She did not maintain appropriate and adequate records of the transfers between accounts and she was negligent in her handling of the accounts, in violation of A.R.S. § 32-2153(A)(18) and (22). Her misuse of the trust funds and breach of fiduciary duty shows that she is not a trustworthy person in violation of A.R.S. § 32-2153(B)(7).

DISPOSITION: Respondent's real estate broker's license is revoked.

### APPLICATIONS DENIED

#### 00A-085

**Robert Anthony DelGarbino  
Tempe**

DATE OF ORDER: October 27, 1999

FINDINGS OF FACT: In his May 26, 2000 application for an original real estate salesperson's license, Petitioner disclosed convictions for assault in 1983, Attempted Theft in 1987, Presentation of a False Document in 1990, a 1996 Fire Hazard Violation and a 1996 conviction for Assault and Criminal Damage.

In his Findings of Fact, the Administrative Law Judge wrote, "Mr. DelGarbino believes himself to be a changed person from the one who committed the actions underlying the above-mentioned convictions. Given the nature of the convictions, the fact that the most recent conviction occurred approximately four years ago, that Mr. DelGarbino committed the latest offense when he was in his mid-30s, that he was evasive and did not appear remorseful at the hearing, leads the Administrative Law Judge to find that, at this time, Mr. DelGarbino has not demonstrated by a preponderance of the evidence that he is rehabilitated or that he possesses the good character required by the Department of a license."

DISPOSITION: Petitioner's license application is denied.

#### 00A-073

**Robert S. Bull  
Phoenix**

DATE OF ORDER: November 2, 2000

FINDINGS OF FACT: In February 1997, Petitioner was convicted of Solicitation to Commit Forgery, a class 6 undesignated offense. Petitioner was placed on probation for three years or until he paid a financial assessment of \$1,125. In September 1999, the Court discharged Petitioner from probation and designated the

offense as a misdemeanor.

On July 1999, Petitioner was convicted of Aggravated DUI. He was placed under unsupervised probation for 90 days.

VIOLATIONS: The Administrative Law Judge concluded that Petitioner's convictions show he is not a person of honesty, truthfulness and good character during that time period within the meaning of A.R.S. § 32-2153(B)(7). The Judge further found that "Petitioner appears to have taken positive steps to rehabilitate his life and character. These positive steps include (1) attending A.A.; (2) successfully completing probation; and (3) paying all court ordered fines, costs and assessments.... However, insufficient time has passed to determine if the Petitioner is truly a person of honesty, truthfulness and good character.

DISPOSITION: Petitioner's license application is denied.

#### 00A-087

**Francis R. Armstrong  
Benson**

DATE OF ORDER: November 21, 2000

FINDINGS OF FACT: Petitioner appealed the Department's denial of her application for a real estate salesperson's license. A hearing was set for October 5, 2000. Petitioner did not appear at the hearing.

DISPOSITION: Petitioner's license application is denied.

### CONSENT ORDERS

#### 00A-098

**William K. Clark  
Phoenix**

DATE OF ORDER: October 1, 2000

FINDINGS OF FACT: In his July 2000 application for an original real estate salesperson's license, Petitioner disclosed a 1994 conviction for DUI, a 1996 conviction for DUI, and a 1999 conviction for Driving to Endanger. DISPOSITION: Petitioner's application for a real estate salesperson's license is approved provided he satisfies all conditions set forth herein. The Commissioner shall issue Petitioner a two-year provisional license. Under this license, Petitioner shall comply with the following terms and conditions:

a. Petitioner shall abstain completely from the use of any alcohol, illegal drugs or controlled substances unless taken pursuant to a valid prescription and orders of a medical doctor;

b. Petitioner shall submit to body fluid tests or breath tests, randomly drawn, not exceeding two per month at the request and election of the Department's Compliance Officer.

c. Within 10 days of employing Petitioner, each employing broker shall file with the Compliance Officer a signed statement certifying that the broker has received a copy of this Order and agrees to act as Petitioner's practice monitor. The practice monitor shall submit bi-monthly written reports to the Compliance Officer which attest to Petitioner's workload as well as the quality of his services and client relationships. The practice monitor shall be responsible for reporting any behavior or conduct which violates real estate statutes or rules, or any precepts or standards as prescribed by the National Association of Realtors' Code of Ethics.

#### 00A-115

**James W. Branson  
Sedona**

DATE OF ORDER: October 13, 2000

FINDINGS OF FACT: Respondent became indebted to plaintiffs Vincent Buxo and Laura Lempe as the result of a judgment entered on January 7, 1991, in the case

*Continued on page 6*

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of Buxo and Lempe v. Branson, et al., in Maricopa County Superior Court. The judgment resulted from misappropriation of client funds (rental income) by Branson.

Pursuant to a court order, the Real Estate Recovery Fund paid \$10,000 to plaintiffs in connection with the judgment and against the license of Respondent.

As a result, Respondent is obligated to repay the Department \$10,000 plus interest, for a total of approximately \$23,200. As a result of payment from the Real Estate Recovery Fund, Respondent's real estate license was automatically terminated.

Respondent has made no payments to the Department. He has represented to the Commissioner that he has been gainfully employed, acted responsibly and with good character since his license was revoked. He asserts he has had no convictions from 1990 to September 2000.

Respondent has consented to pay \$23,200 to the Real Estate Recovery Fund. The Commissioner and Respondent have agreed that Respondent shall be permitted to apply for and obtain a new real estate salesperson's license provided that his representations concerning his good character and lack of convictions is true and he complies with all conditions set forth in this order. Respondent may not obtain any license from the Department until he complies with A.R.S. §§ 32-2123 and 2124.

**DISPOSITION:** Within 30 days after the effective date of this Order, Respondent shall deliver to the Department \$23,200. This shall be considered payment in full of all monies owed by Respondent to the Real Estate Recovery Fund.

Respondent shall provide a copy of this Order to his employing broker and the broker shall acknowledge, in writing, that the broker has read it.

Respondent may not apply for a real estate broker's license for three years from the date of entry of this Order.

**99A-0146**

**Donald T. Stapley**  
**Mesa**

**DATE OF ORDER:** October 13, 2000

**FINDINGS OF FACT:** Respondent failed to disclose to the Department in 1992 certain lawsuits involving the real estate development company Val Vista Lakes Development (a general partnership) and the filing of a bankruptcy petition in that regard.

Respondent asserts that these lawsuits and the bankruptcy petition were all a matter of public record.

At all time material to this matter, Respondent was licensed as a real estate broker in Arizona. Respondent asserts that certain mitigating circumstances existed, as set forth in a sworn affidavit.

**VIOLATIONS:** Respondent concedes that he omitted to provide full information requested on the application forms of the Department, within the meaning of A.R.S. § 32-2153(B)(1).

**DISPOSITION:** Respondent to pay a civil penalty in the amount of \$1,000. Respondent shall attend six hours of continuing education, in addition to hours required for license renewal, in the category of Commissioner's Standards and Real Estate Legal Issues.

**00A-114**

**Nick J. Thomas**  
**Tucson**

**DATE OF ORDER:** October 13, 2000

**FINDINGS OF FACT:** The Department issued an original real estate salesperson's license to Respondent in 1979. From 1972 through 1998, the Department renewed Thomas' license numerous times based on the contents of the applications he filed.

Respondent's license expired in June 1999, and on June 23, 2000, he submitted an application for late renewal of his license. The application disclosed that in March 1992 Respondent was charged with second-degree theft, a felony, in the District Court for the State of

Alaska.

Respondent pleaded *nolo contendere* to an amended charge of third-degree theft and was fined \$300.

**VIOLATIONS:** Respondent's failure to notify the Department of the conviction constitutes disregard for, or a violation of, the rules adopted by the Commissioner, within the meaning of A.R.S. § 32-2153(A)(3). His failure to report the conviction as required by A.A.C. R4-28-301(F), formerly (C), constitutes a violation of A.R.S. § 32-2153(A)(3). His failure to disclose the conviction in his 1993 renewal application constitutes procuring or attempting to procure a license by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1). Respondent was convicted of a felony or of the crime of forgery, theft, extortion, conspiracy to defraud, a crime of moral turpitude or other like offense, within the meaning of A.R.S. § 32-2153(B)(2).

**DISPOSITION:** Respondent's application for license renewal is granted. Respondent's license is suspended for 10 days upon entry of this order. Respondent shall pay a civil penalty in the amount of \$300, and shall attend nine hours of approved continuing education classes in the categories of Commissioners's Standards, Agency Law, Contract Law or Real Estate Legal Issues.

**00A-064**

**George "G-II" Varrato, II**  
**Phoenix**

**DATE OF ORDER:** October 26, 2000

**FINDINGS OF FACT:** Petitioner was issued an original real estate salesperson's license in July 1998. In May 2000, Petitioner submitted an application for license renewal.

On January 21, 2000, Petitioner was convicted in U.S. District Court, Middle District of Florida, of Misprision of Felony, a felony, in violation of 18 U.S.C. § 4. The Court placed Varrato on supervised probation for 24 months commencing January 14, 2000.

On September 12, 2000, the Court entered an Order terminating Petitioner's term of probation.

**VIOLATIONS:** Petitioner has been convicted of a felony, in violation of A.R.S. § 32-2153(B)(2).

**DISPOSITION:** Petitioner's application for renewal of his real estate salesperson's license is approved provided that he satisfies all conditions set forth herein.

Petitioner is assessed a civil penalty in the amount of \$1,000. He shall take 15 hours of approved real estate continuing education, in addition to hours required for license renewal, in the areas of Commissioner's Standards, Real Estate Law and Real Estate Ethics.

## RECOVERY FUND PAYMENTS

**Robert V. Encinas**  
**Glendale**

A court order was entered on May 24, 2000, by Maricopa County Superior Court Judge Michael Dann for payment of \$8,223.62 to Maria de Jesus Peniagua for losses she incurred as a result of conduct by licensee Robert V. Encinas, then an employee of Diamond Realty.

In or about late 1993, Encinas agreed to assist Peniagua in her efforts to locate and buy a residence in Phoenix by assuming existing financing. At the same time, Encinas had an exclusive listing pending with James Walkup to sell his Phoenix home for \$51,000.

In November 1993, Encinas wrote a contract on behalf of Peniagua and her son to purchase

Walkup's property for \$48,000 by assuming the existing mortgage. Peniagua gave Encinas an earnest money deposit of \$1,500, and Encinas directed her to have a check drawn to Elaine Larsen for \$3,000 as a down payment. Larsen was the wife of one of the Diamond Realty salespeople, and purportedly held a second deed of trust on the subject property.

Peniagua was an unsophisticated buyer who spoke only Spanish and had little or no understanding of the terms of the purchase contract and available financing. She relied solely on Encinas' knowledge and expertise, and acted on Encinas' and his broker's recommendations.

Encinas took Peniagua's money but failed to timely deposit it in a trust or escrow account, and he failed to open an escrow or arrange to transfer the house to her. He later told Peniagua that the contract was void, but he failed to return her deposit or locate a replacement home for her. Encinas signed a promissory note to repay Peniagua \$1,000 of the \$4,500 deposit, but defaulted on that note.

**Richard Stuart Chancellor**

**Tucson**

On May 26, 2000, Pima County Superior Court Judge Lina Rodriguez ordered a \$20,000 Recovery Fund payment to Illinois resident Warren Buckey against former real estate broker Richard Stuart Chancellor of Tucson.

The underlying transaction involved fraud by Chancellor who was a principal in the transaction. The lawsuit was brought by C. E. Johnson and involved funds that Chancellor solicited for El Diamante 11, a residential Tucson subdivision marketed by Chancellor and Lancer Realty as Skyline Ridge Townhomes.

Johnson sued, in part, on behalf of Buckey, who had given Chancellor \$100,000 on a Contract for Sale whereby Buckey purchased a townhouse to be built in El Diamante 11 within three years. Chancellor purported to assign Buckey the proceeds from Chancellor's interest in a partnership as security for the transaction. The assignments were useless because Chancellor was not a limited partner, and he had already assigned all of his interest in the general partner (Skyline corporation) to a third party.

Johnson separately loaned Chancellor a total of \$139,000 from personal and corporate funds. The judgment against Chancellor was for losses by both Buckey and Johnson; however, no part of Johnson's loss was paid from the Recovery Fund because it was based on a loan or investment. The Real Estate Recovery Fund covers only losses that result from real estate transactions involving a licensee as either an agent or principal.

Chancellor was convicted and sentenced to five years in prison on each of two counts of fraudulent schemes, and was ordered to pay \$1.2 million in criminal restitution. Buckey was to receive a portion of that restitution, but Chancellor has yet to pay him anything.

**John Anthony Longo**  
**Phoenix**

In 1999 we reported two Recovery Fund payments against the license of John Anthony Longo based on judgments against him for property mismanagement. Another payment has now been made against Longo's license based on yet another judgment for similar conduct.

Ronald and Cheryl Ross of Huntington Beach, California, filed an action and obtained a judgment based on Longo's failure to pay them net rent proceeds on their rental property located in

*Continued on page 7*

## Confused about the new Affidavit of Disclosure? You're not alone.

*Reprinted from the October 2000 issue of the Arizona Real Estate Bulletin.*

There seems to be much confusion about the new Affidavit of Disclosure requirement enacted by A.R.S. § 11-806.03. We asked Subdivision Division Director Roy Tanney if he would clarify the requirement for our readers. Here's what he says:

What you need to understand is:

1. The ADRE has no jurisdiction over any part of this law. Our involvement with the provisions of this law will be limited to dealing with a citizen's complaint which alleges the failure of a licensee to adequately represent a client (Seller or Buyer) as to the requirements and provisions of the law. The seller is responsible for the accuracy of the Affidavit of Disclosure. Neither the ADRE, County Government, or County Recorder have any responsibility for the Affidavit's content.

2. This law does not apply to Subdivided Lands. Our interpretation has been that the sale of a lot or parcel located within the boundaries of a recorded subdivision map is not subject to the disclosure requirement. However, what if the subdivision lot is being split? An argument can be made that the land being split off is not a lot in the subdivision because it was not originally created on the subdivision map. Therefore, the lot is not subdivided land and is not exempt from the Affidavit of Disclosure requirement. Absent case law on this specific question, we recommend erring on the side of caution and proceed as if the law applies to the splitting of subdivision lots.

3. Any purchaser of an Unsubdivided Land parcel will need to comply with and satisfy the provisions of this law prior to the resale or splitting of the parcel.

4. This law does not apply to lands which are located within the corporate boundaries of a Town or City.

5. The law and its requirements not only apply to the first time seller but all subsequent sellers of the land. Each seller of land, which is subject to the provisions of the law, must prepare and record the Affidavit of Disclosure. Further, a buyer must be given the Affidavit at least 7 days

prior to the transfer of the property and the buyer has 5 days to rescind the purchase after receipt of the Affidavit.

6. Prior to recording Affidavits of Disclosure, you should consult with the County Recorders on proper document format. To assist County Recorders in the processing and indexing of Affidavits, we recommend that the Affidavit include the correct legal description of the land and accurate names of the seller(s) and buyer(s). Your Affidavit can be rejected for recordation if it does not meet all requirements.

7. Affidavits by nature are a sworn statement and must be adequately executed by the seller of the property. Signatures must be notarized.

8. This law applies to land regardless of whether there are improvements located on the land,

including dwellings.

This is not a legal opinion, nor a complete analysis or explanation of the provisions of A.R.S. § 11-806.03. We recommend that you obtain a copy of the law, read it, and, if not understood, consult with your broker or attorney. Further, there may be other disclosures required to be provided to the buyer over and above those disclosures required by this law.

The Arizona Association of Realtors® has created a disclosure document prepared by legal counsel that AAR believes complies with the new statute. To download a copy in Adobe Acrobat (pdf) format, visit the AAR Web site at [www.aaronline.com](http://www.aaronline.com). Enter "disclosure" as the search term in the search box at the top-left of the page. In the resulting page, select "Land Affidavit of Disclosure Form and Instructions."

## Recovery Fund payments

*Continued from page 6*

Phoenix. On April 14, 2000, Superior Court Commissioner Robert Colosi ordered payment from the Fund of \$3,275, representing net rent proceeds, attorneys' fees and costs they incurred in the litigation.

In a June 25, 1996, Consent Order with the Department, Longo and Profit Realty admitted to

commingling trust funds with his personal funds and converting them to his own use. The Consent Order required Longo to pay restitution to victims, including \$1,675.11 to the Rosses. Longo defaulted on the restitution payments and filed for bankruptcy. Rosses obtained a lift of the automatic bankruptcy stay in order to pursue an application for payment from the Recovery Fund.

## Online or computer-aided continuing education courses now offered by nine schools

A change in the Commissioner's Rules effective in May 2000 permits approved real estate schools to provide online continuing education. Nine real estate schools have obtained computer-aided or online course approval from the Department.

Arizona School of Real Estate, Scottsdale  
America's Best Online Real Estate Education  
Best School of Real Estate, Sedona  
[RealtyWebSchool.Com](http://RealtyWebSchool.Com)

Real Estate WebSchool  
Casler School of Real Estate, Phoenix  
C. David McVay Schools, Phoenix  
Hogan School of Real Estate, Tucson  
ProSchools, Inc.

Links to school Web pages along with addresses and telephone numbers may be found on the Department's Web site, [www.re.state.az.us](http://www.re.state.az.us). Open the Table of Contents and look for Approved Real Estate Schools.

## Final version of ADRE's 2001 legislative package available on the Web

The final version of the Department's proposed legislative package to be introduced during the 2001 legislative session is now available on our Web

site. Click on "Late-Breaking News" and look for the item posted on December 15. The document is available in Adobe Acrobat format.

## Broker Management Clinics

*Continued from page 1*

structors who wished to become qualified to teach the Clinics. Seventy-three instructors who attended the Workshops passed the written examination and were certified as Broker Management Clinic instructors.

An instructor who was not able to attend a Workshop and who wishes to become certified may attend a Broker Management Clinic then pass the Department examination.

Schools offering the Broker Management Clinic, at this writing, are:

- Arizona Association of Real Estate Exchangers, Mesa
- Arizona School of Real Estate & Business, Scottsdale
- Best School of Real Estate, Sedona

- Brodsky School of Real Estate, Tucson
- Bud Crawley School of Real Estate, Phoenix
- Cecil Daniels Realcor, Peoria
- Hogan School of Real Estate, Tucson
- Mary Lee Greason Seminars, Tucson
- Phoenix Association of Realtors®
- Prescott Valley School of Real Estate, Prescott
- Professional Institute of Real Estate, Scottsdale
- ReNewal Education Corporation, Phoenix
- Westford College, Glendale

School addresses, Web sites and telephone numbers may be found on the Department's Web site.

## You can receive Department news by email

More than 1,200 people are notified immediately when Late-Breaking News is posted on the Department's Web site. Are you among them?

Adding your email address to our mailing list is simple. You can subscribe on our Late-Breaking News page at [www.re.state.az.us](http://www.re.state.az.us), or you can address your request to [cdowns@re.state.az.us](mailto:cdowns@re.state.az.us).

You won't receive email from us every day, just when we have something new to share with you.

And you can rest assured that your email address will remain confidential.

## Bulletin

*Continued from page 1*

lines of communication with Arizona's real estate professionals.

You will find the *Bulletin* on our Web site at [www.re.state.az.us](http://www.re.state.az.us) in Adobe Acrobat format. Just look for the Real Estate Bulletin button on our Home Page.

If you'd rather receive your copy in the mail, just send your check for \$10 to Bulletin, ADRE, 2910 N. 44th Street, Phoenix AZ 85018. You'll receive all six issues during 2001.

## 2000 Law Book now available

The 2000 edition of the *Arizona Real Estate Law Book* is now available. Entirely revised for the year 2000, the book's 577 pages contain the Arizona real estate statutes, Commissioner's Rules, the Arizona Fair Housing Act, the Attorney General's Fair Housing Rules, RESPA, Arizona's three Landlord & Tenant Acts, and other statutes of importance to the real estate professional. Extensive annotations to statutes are also included.

The book fits the special seven-ring binder furnished with earlier

editions.

The cost of the book is \$15. The special seven-ring binder, if you need one, may be purchased for an additional \$7. You may pick up your copy of the book at our Phoenix or Tucson office, or order your copy by mail.

Address mail orders to Law Book, ADRE, 2910 N 44th Street, Phoenix AZ 85018. Include \$3 for shipping for a book or book and binder..

You may view the text of the Arizona Real Estate Law Book on our Web site at [www.re.state.az.us](http://www.re.state.az.us).

# ARIZONA

## REAL ESTATE BULLETIN

Arizona Department of Real Estate  
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